IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/08/2002

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THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 4920 OF 2001
and
WPMP.No. 6996 OF 2001 & WVMP.No.721 OF 2002

1. R.A.S. Agencies,
rep. by its Partner
S. Vijayaraghavan
I.O.C. Dealer,
By-pass Road, Ranipet,
Vellore District.

2. Jupiter Agencies rep. by
Partner Karunanidhi,
I.O.C. Dealer, MBT Road,
Ranipet, Vellore District.

3. Lakshmi Durgai Enterprises,
rep. by its Proprietor
S. Rajendran,
119/C, MBT Road, Ranipet,
Vellore District. .. Petitioners

-Vs-

1. The Union of India,
rep. by the Secrtary,
Ministry of Petroleum and
Natural Gas, New Delhi 1.

2. State Level Co-ordinator,
Indian Oil Bhavan,
Nungambakkam High Road,
Chennai 34.

3. The Divisional Manager,
Indo-Burma Petroleum Company Ltd.,
10, Major V.R. Ramanathan Road,
Chetpet, Chennai 31. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioners : Mr. D. Peter Francis

For Respondent-1 : No Appearance

For Respondent-2 : Mr.P.N. Radhakrishnan

For Respondent-3 : Mr.R. Krishnamoorthy
Senior Counsel for
Mr.K. Kumar, ACGSC

:J U D G M E N T
The matter had been listed for considering the question of vacating the stay and since same question was involved in the writ petition, on consent of the counsels appearing for all the parties, the writ petition itself was taken up for hearing.

2. Three petitioners, who are retail dealers of petroleum and other petroleum products have filed this writ petition for issuance of writ of mandamus forbearing the respondents from establishing a new petroleum retail outlet in S.No.680/1 in Vaniveedu Village except in accordance with the guidelines issued by the first respondent for selection procedure of dealership.

3. It has been alleged that there was no advertisement calling for appointment of new dealers and a retail outlet is proposed to be given on political consideration. It is further asserted that the proposed retail outlet is 300 metres from the retail outlet of the first petitioner and it has been stated that minimum 5 kms distance is required to be maintained between two retail outlets.

4. In the counter affidavit filed on behalf of the second respondent it has been submitted that the third respondent has made arrangements to open a company owned retail outlet in S.No.680/1 in Vaniveedu Village in Vellore District. The allegation that the retail outlet is being opened without necessary sanction and in violation of guidelines have been denied. It is also stated that the distance between the proposed retail outlet and that of the first petitioner is more than 300 metres.

5. In course of hearing, the learned counsel appearing for the writ petitioners submitted that as per the latest guidelines, which had been highlighted in various newspapers, it has been decided that no new retail outlet is to be set up within 1 km of any other retail outlet. Even though such a stand was not specifically taken in the writ petition, in order to ascertain the present position, the counsel appearing for the second respondent, namely the State Level Co-ordinator was called upon to obtain instructions and produce the relevant documents. Learned counsel appearing for the second respondent has produced certain documents including the minutes of the meeting of the Secretary (Morth) and representatives of the oil industry in the matter relating to revision in norms for access to fuel stations along National Highways. Paragraphs 1 to 3 of the proposed revised norms were relied upon by the counsel appearing for the petitioners to

buttress his submission. Those norms are extracted here under :-

" 1. No new RO will be set up within 1 KM of intersection of Highways (Intersection would mean the junction of NH with another NH & SH)

2. Service Roads to be provided if two or more Ros (same side of the road) are situated within 1 KM of each other.
3. No new RO will be permitted to set up within 1 KM of an existing Check Barrier. Similarly no check barrier to be set up within 1 KM of a RO.

6. The aforesaid proposed norms are yet to be accepted and it is obvious that the matter is still under consideration. Moreover, the proposed norms would prima facie be applicable to retail outlets to be established in future.
In the present case, a decision has already been taken for establishing a retail outlet. Even otherwise, the assertions made in the writ petition do not make out a clear case of violation of any of these proposed norms.

7. It appears that the writ petitioners have mainly relied upon the assertion that the proposed outlet is within 300 metres of the retail outlet of the first petitioner. This assertion has been factually denied by the respondents who have stated in categorical terms that the distance between two retail outlets is more than 300 metres. In the absence of any acceptable material on record, it cannot be held that the proposed outlet is within the distance of 300 metres of the retail outlet of the first petitioner.

8. The petitioners are existing retailers. One of the apprehension expressed by them is relating to diminution in their business. Such an apprehension even if factually correct, cannot form a legal basis for issuing a writ prohibiting establishment of other retail outlets in the vicinity. It is no doubt true that the respondents while considering the question of establishing a retail outlet have to keep the relevant norms and guidelines in view and if any mandatory norm or guideline is violated, in appropriate case, writ may be issued directing the concerned authorities to observe the mandatory norms and guidelines. However, the mere apprehension that there is likelihood of fall in the business of existing retail outlet-holder, cannot be a ground to issue any writ. In the present case, the petitioners are not able to point out violation of any particular norm or guideline. In the absence of any such violation of norms/guidelines, there is no justification prohibiting the respondents from establishing a new retail outlet.

9. For the aforesaid reasons, I do not find any merit in the writ petition and the same is dismissed. All the interim orders stand vacated. Consequently, WPMP.No.6996/01 and WVMP.No.721 of 2002 are closed.

29-08-2002
Index : Yes
Internet : Yes
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To

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P.K. MISRA, J.

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